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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,070	11/09/2001	Deanna Michelle Woods		5237

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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/041,070

Applicant(s)

WOODS ET AL.

Examiner

Randall Chin

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 5-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11092001.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 5-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the Paper filed December 1, 2003.
2. Applicant's election with traverse of species 2, Fig. 5, claims 1-4 in the Paper filed December 1, 2003 is acknowledged. The traversal is on the ground(s) that claims 1-15 should all be examined together since any search with respect to one of the groups of claims would overlap into the categories of search for the other groups of claims and for efficiency purposes. This is not found persuasive and the election of species will not be withdrawn since Applicant has not traversed on the grounds that the species are not patentably distinct. Further, there are dependent claims drawn to each of the different animals that make up part of the handle and each species present different structural features (e.g., appendages like feet, ears, beak, etc.) that can be claimed.

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

3. The IDS paper that includes other Prior Art (i.e., Non-patent literature) filed November 9, 2001 has not been considered since such documents are not included in the file application.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Streibel '159.

The patent to Streibel '159 teaches a sanitary toothbrush comprising a handle portion 1 formed of a rigid material, having an upper surface, a lower surface, a distal end, a proximal end, and an elongated intermediate portion in between, the distal end of the handle having a brush unit at end portion 2 generally comprised of a rectangular head portion (Fig. 1) adjacent and integral thereto, the head portion having an upper surface with a plurality of bristle tufts 102 extending outward therefrom, and the proximal end of the handle generally comprised of a curved shape in the form of a hook 12 (see Fig. 1 and col. 3, lines 59-63) for hanging the toothbrush, the curved proximal end being of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position on wires 15 (see Fig. 1).

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnes '579.

The patent to Barnes '579 teaches a sanitary toothbrush comprising a handle portion 1 formed of a rigid material, having an upper surface, a lower surface, a distal end, a proximal end, and an elongated intermediate portion in between, the distal end of

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the handle having a brush unit at extremity 5 generally comprised of a rectangular head portion (Fig. II) adjacent and integral thereto, the head portion having an upper surface with a plurality of bristle tufts 6 (Fig. III) extending outward therefrom, and the proximal end of the handle generally comprised of a curved shape in the form of a hook 2 (col. 2, lines 57-60) for hanging the toothbrush, the curved proximal end being of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position. Although Barnes' toothbrush is actually hung or suspended through the use of a hole 3 in the hook 2 (Figs. I and IV), Barnes '579 still meets the recited language of claim 1 notwithstanding this means of hanging or suspension. Moreover, it will be pointed out that Barnes' toothbrush could well be hung in the manner of Applicant's invention simply because of Barnes' hook structure (Fig. I).

As for claim 2, the curved proximal end of the handle extends outward in a direction that is opposite the bristle tufts (Fig. I).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnes '579 in view of Atkins '464.

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The patent to Barnes '579 discloses all of the recited subject matter as recited above with the exception of the elongated intermediate portion designed and shaped to represent a tailed animal, with the curved proximal end of the handle of the toothbrush forming the tail and wherein the designed and shaped animal represented in the intermediate portion of the handle is a monkey, and where the curved proximal end of the handle is designed and shaped as the monkey's tail.

The patent to Atkins '464 teaches a variety of animal toothbrushes as shown in Figs. 19 and 21, for example, having a curved tail proximal end. Further, Atkins '464 explicitly teaches that numerous other tailed animals such as a monkey could also be utilized in making up the handle of the toothbrush (see col. 9, lines 8-11). Given this teaching, it would have been obvious to one of ordinary skill in the art to have modified Barnes' handle such that the elongated intermediate portion is designed and shaped to represent a tailed animal, with the curved proximal end of the handle of the toothbrush forming the tail and further wherein the designed and shaped animal represented in the intermediate portion of the handle is a monkey, and where the curved proximal end of the handle is designed and shaped as the monkey's tail as suggested by Atkins '464 for hanging or suspending the toothbrush at the tail end. It is well known that monkeys have long tails and that the monkey's tail can curve in an extreme manner to give it a hook shape (curved as shown in Barnes' Fig. 1). In any case, Atkins' 464 as a secondary reference has been applied to simply teach that the elongated intermediate portion can be in the form of a monkey. The primary or base reference to Barnes '579

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already teaches the curved proximal end (i.e., the "tail") for hanging or suspension purposes.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Haddad, Landauer, Hansen, Boelke, Cooke, Gallanty, Harrison, and NejdI are pertinent to various brushes with hook shaped ends or ends in the form of an animal.

10. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached at (571) 272-1281. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.



R. Chin



Randall Chin  
Primary Examiner  
Art Unit 1744